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685; *Comstock v. Affoelter*, 50 Mo. 411; *Putnam v. Tillotson*, 13 Met. 517; MECH-EM ON SALES, sec. 1182. Ordinarily, no notice of shipment is necessary. MECH-EM ON SALES, sec. 740, citing *Bradford v. Marbury*, 12 Ala. 520, 46 Am.D. 264. But when delivery is made to different carriers, even though the goods are of such character as to justify the shipper's action, perhaps some notice of such fact may reasonably be required for the vendee's protection. A delivery by installments, under an indivisible contract, is good if both shipments arrive before any objection is made. *Ramsey v. Kelsea*, 55 N. J. L. 320, 26 Atl. 907, 22 L. R. A. 415.

SURETYSHIP—OFFICIAL BONDS—LIABILITY FOR ACTS DONE UNDER UNCONSTITUTIONAL STATUTES.—A fiscal county court levied a tax in excess of the constitutional limit. Under this void levy the sheriff collected \$3200, which, after the levy had been declared unconstitutional, he refused to pay over to the proper court. In an action against his sureties on his official bond, *Held*, that the sureties were not liable for the amount collected under the void levy. *Commonwealth v. Stone* (1903), — Ky. —, 71 S. W. Rep. 428.

The bond in this case was conditioned that he should "pay over to such persons at such times as they may be respectively entitled thereto, all money that may come into his hands as sheriff," and the court places its decision on the ground that the collection of an unconstitutional tax was not a duty imposed on the sheriff by the law and therefore the money so collected was not a liability embraced by the terms of the bond. See *Whaley v. Commonwealth* (1901), — Ky. —, 61 S. W. 35. The authorities are agreed that the obligation of the surety is strictissimi juris. *Bank v. Ziegler*, 49 Mich. 157. But there is a lack of uniformity respecting the extent of the surety's liability on an official bond for the principal's wrong. The weight of authority is that the liability extends to acts done both *colore officii* and *virtute officii*. MECH-EM, PUBLIC OFFICERS, secs. 283 and 284. The principal case seems to be analogous to those cases where the officer acts without any writ whatever and the cases generally support the doctrine that under such circumstances the sureties are not liable for his wrong. *McLendon v. State*, 92 Tenn. 520, 21 L. R. A. 738 distinguishes this class of cases from those where there is a valid writ but a wrongful attachment as in *Lammon v. Feusier*, 111 U. S. 17.

TRADE-MARKS—RIGHT TO PROTECTION—DECEPTIVE USE AS BAR TO RELIEF.—For a number of years complainant has been advertising and vending a medical preparation known as "Syrup of Figs," and claims trade-mark rights therein. Defendant placed upon the market a medical compound resembling complainant's preparation, under the identical name "Syrup of Figs." Bill in equity for an injunction restraining defendant from using such name, and for an accounting for gains and profits. It was shown in defense that complainant's preparation contained in fact practically none of the juice of the fig. It was therefor contended that complainants were themselves perpetrating a fraud on the public. *Held*, that complainant can not have relief. *Worden & Co. v. California Fig Syrup Co.* (1903), — U. S. —, 23 Sup. Ct. R. 161.

The court found that complainant and appellee had so fraudulently represented to the public the nature of the preparation which they were selling under the name "Syrup of Figs," that a court of equity would not protect them in the use of that name. The decree of the circuit court of appeals was therefore reversed. It is well settled that a trade-mark that in itself is fraudulent and deceptive, will not be protected. *Palmer v. Harris*, 60 Penn. St. 156; *Joseph v. Macowsky*, 96 Cal. 518, 19 L. R. A. 53; *Leather Cloth Co. v.*

Am. Leather Cloth Co. 4 DeG. J. & S. 136, 11 H. L. Cases 523; COOLEY ON TORTS p. 364. Complainant in the principal case has been in the courts a number of times to protect claimed rights in the use of the name "Syrup of Figs," and with varying success. See *Imp. Fig Syrup Co. v. Cal. Fig Syrup Co.* 54 Fed. R. 175, 4 C. C. A. 264; *Fig Syrup Co. v. Putnam*, 69 Fed. R. 740, 16 C. C. A. 376; *Same v. Stearns Co.* 73 Fed. R. 812, 20 C. C. A. 22, 33 L. R. A. 56. After the two last decisions which were adverse to them, complainants began printing on their labels a statement that the use of figs in the compound was simply to promote the pleasant taste. This in the view of the court in the principal case, was insufficient to purge them of fraud.

VENDOR AND PURCHASER—RESCISSION—RECOVERY OF THE VALUE OF IMPROVEMENTS AS DAMAGES.—Suit in equity for rescission of land contract and damages. Rembert bought a plantation of the defendant, paying him \$7,000 cash and executing notes for the balance of the purchase price (\$32,500.00), upon the defendant's representation that the land conveyed contained 500 more acres than it did and that a large part thereof was under actual cultivation. Plaintiff had prior to this time examined the land, but upon discovering cocoa grass on the land he abandoned a further inspection as well as an intention to purchase, until these representations were made. In his bill the plaintiff also averred as damages the value of the improvements he had made upon the land and also the expense he was put to by reason of the necessity of moving from his former plantation. As a set-off the defendant claimed rental for the two years the plaintiff occupied the land. Held, that the plaintiff was entitled to a rescission, but that he could not recover the value of the improvements, nor for the cost of moving. The court also granted the defendant's set-off. *Neely v. Rembert* (1902), — Ark. —, 71 S. W. Rep. 259.

The defendant contended that the plaintiff was not entitled to the equitable remedy of rescission, unless the vendor knew the representations to be false at the time he made them and the vendee had no means of discovering their falsity. To constitute fraud in equity it is not necessary that the party be charged with moral culpability, if the representation contains the other elements of fraud and the party made a false representation, though at the time he had no knowledge of its untruth, but had no reasonable grounds for believing its truth. POMEROY'S EQUITY JURISPRUDENCE, Vol II, par. 885. The plaintiff might have brought an action at law for the misrepresentation, as the defendant was guilty of a "moral delinquency," in that he made the false statement under such circumstances that the law might impute to him knowledge of the falsity of the representation. Pomeroy, *supra*, Vol. II, par. 884. This twofold right of action—in law or in equity—in cases of fraud is now well recognized. *Moline Plow Co. v. Carson*, 72 Fed. Rep. 387; *Barnes v. Railway Co.*, 12 U. S. App. 1, 3, 6; 4 C. C. A. 199, 54 Fed. Rep. 87; *Cooper v. Schlesinger*, 111 U. S. 148, 155, 4 Sup. Ct. 360; *McFerran v. Taylor*, 3 Cranch 270; *Doggett v. Emerson*, 3 Story 700, 732, 733, Fed. Cases No. 3960; *Keiper v. Rogers*, 19 Minn. 32, 36; *Litchfield v. Hutchinson*, 117 Mass. 195, 197; *Cole v. Cassi*, 138 Mass. 437, 438. In the absence of express decisions as to whether a party may recover for improvements in a suit for the rescission of the contract, the reasons which prevent parties from recovering for improvements in ejectment would seem to govern. In the latter cases in order to recover for improvements [it must appear that such party in good faith believed he had good title at the time he made the betterment. If he be informed of his defective title and of the plaintiff's intentions to sue, he cannot recover as damages the value of the betterments made subsequent to the notice. *Gaines v. Kennedy*, 53 Miss. 103; *Munn v. Berger*, 76 Ga. 705; *John-*